



**NATIONAL PRIVATE TRUCK COUNCIL**

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QA  
20026

May 24, 1996

Docket Clerk  
Room 4232  
Office of the Chief Counsel  
Federal Highway Administration  
400 Seventh Street, S.W.  
Washington, D.C. 20590

FHWA-97-2277-29

LEGS./REGS. DIV.

96 MAY 29 10:08

FEDERAL HIGHWAY  
ADMINISTRATION

RE: FHWA Docket No. MC-96-6; Safety Performance History of New Drivers

Enclosed is an original and one (1) copy of the comments of the National Private Truck Council in the above-referenced docket.

Please date-stamp a copy and return in the self-addressed and stamped envelope that is enclosed.

Respectfully,

*Doreen E. Reagan*

Doreen E. Reagan  
Director of Safety Programs

DOCKET MC-96-6-28  
PAGE 1 OF 6

CREATING THE  
RIGHT FIT



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May 24, 1996

FHWA Docket No. MC-96-6  
Room 4232  
Office of the Chief Counsel  
Federal Highway Administration  
400 Seventh Street, S.W.  
Washington, D.C. 20590

RE: FHWA Docket No. MC-96-6; Safety Performance History of New Drivers

The National Private Truck Council (NPTC) offers the following comments on the proposal of the Federal Highway Administration (FHWA) to amend its regulations to specify minimum safety information that new and prospective employers must seek from former employers during the investigation of a driver's employment record.

The National Private Truck Council (NPTC) is the national association which represents companies that use proprietary trucks in furtherance of their main business activities. NPTC has more than 1100 members nationwide, ranging in size from small businesses operating a single delivery truck, to large, Fortune 500 corporations with national distribution systems.

**GENERAL COMMENTS**

Currently, the Code of Federal Regulations (CFR) requires motor carriers to make "an investigation of the driver's employment record during the preceding three years," without specifying the type of information to be sought. Furthermore, the current regulation does not require a former employer to respond to the new and prospective employer's inquiry.

As a result, the current regulations provide little added value or safety benefit to the selection and hiring process of a commercial motor vehicle driver. Meeting the current requirement to investigate the prospective driver's background is merely that - "meeting the requirement."

NPTC agrees with other commenters that the issue of potential liability against a carrier is a very real one and that steps should be taken to protect the carrier when seeking information on prospective employees in safety-sensitive positions. The potential for liability is one reason why, under the current regulations, carriers are cautious about releasing information on previous employees.

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NPTC ANNUAL EDUCATION/MANAGEMENT CONFERENCE  
WASHINGTON DC, MAY 12-15, 1996

DOCKET MC-96-6-28  
PAGE 2 OF 6

However, NPTC believes FHWA's proposal, pursuant to section 114 of the Hazardous Materials Authorization Act of 1994 (Hazmat Act), is a step in the right direction. Any information that can be made available on a driver's skills, qualifications and safety performance will help in the evaluation and selection process of a driver candidate. We support FHWA's overall intent with the proposal.

Specifically, we support the proposed requirement that previous employers must seek from former employers information relevant to the driver evaluation and selection process and that former employers provide that information. We support the proposal that would allow drivers to review and comment on that information.

However, we have some concerns with some of the particulars of the proposal.

#### NPTC ISSUES OF CONCERN

##### Hours of Service Violations

FHWA states that it "considers a driver's hours-of-service violations to be a major safety indicator," and that "drivers who violate the hours-of-service rules often have insufficient rest to safely operate a CMV." FHWA goes on to say that "this information ... will help new and prospective employers identify potentially unsafe drivers."

At this point in time, there is no definitive data to correlate a relationship between hours of service violations and unsafe driving. NPTC believes it is premature to include hours-of-service violations as a "major" safety indicator. It is generally accepted by many in the industry that the logbook system of tracking hours of service is antiquated and needs to be improved. Until that time, it is not right to rely on ineffective system as an indicator of safety. Enforcement of hours-of-service requirements is a complex issue that involves both the motor vehicle driver and the carrier and often is more of an indicator of a carrier's safety management program than a driver's safety performance.

Furthermore, in discussion with NPTC members, they indicate that hours of service violations provide little value in assessing the safety performance of a prospective candidate. NPTC believes that only information should only be obtained and maintained that facilitates the hiring of qualified motor vehicle drivers.

If the hours-of-service violations are kept as part of the proposed regulations, they may have the unintended effect of complicating the hiring process. Carriers will be reluctant to use the hours-of-service information because it does not give an accurate assessment of the driver's safety performance, yet would be required to obtain and keep the information while providing little value.

DOCKET MC-96-6-28  
PAGE 3 OF 6

**NPTC recommends that the proposed requirement for motor carriers to obtain information on hours-of-service violations which resulted in the driver being put out-of-service be deleted at this time.**

**Accident Information**

FHWA states that "motor carriers shall make available all records and information within the accident register that pertain to that driver's accident record."

NPTC does not believe that previous employers should provide all accident information they might retain but only that which is required to be kept in the accident register as described in Part 391.15(b)(1). Carriers retain accident reports, diagrams of accidents, assessments by accident review boards and information that is required to be submitted to insurance carriers or other government agencies that should not be provided to prospective or new employers. In some cases, settlement may be pending and revelation of this kind of information may be damaging.

NPTC believes that the information required to be kept in the accident register under federal regulations is enough information for the prospective/new employer to assess a driver candidate. It is our belief that the intent of FHWA is to provide the prospective/new employers with information that will be helpful in the driver selection process. If the prospective/new employer wants more information, it can be obtained during the driver interview process.

**NPTC recommends that FHWA specify that only information required to be kept in the accident register as described in Part 391.15(b)(1) be made available by previous employers to prospective and new employers.**

Some NPTC members believe that all accidents should be reported to prospective/new employers but recognize that such a requirement may bring with it a whole host of problems. However, if we are truly concerned with a driver's safety performance and risk potential, we should be looking at their entire history of accidents, not just DOT recordable. There are many accidents that occur that are not DOT recordable but may be an indication of a driver's potential performance.

**Alcohol and Drug Information**

Under the proposed Part 391.23(c)(1) and Part 382.413(a)(1), prospective and new employers would be a required to obtain and provide "any" information in the areas prescribed areas in those parts. However, there may be instances when a driver may have been in violation of the prohibitions contained in Part 382, Subpart B for which the employer was not aware of or did not detect. It would reasonable then to only require employers to provide "known" information regarding violations by drivers while under their employment.

DOCKET MC-96-6-28  
PAGE 4 OF 6

NPTC recommends that FHWA add the work "known" to its proposed requirements to 382.413(a)(1)(i) and (ii) to read in (i) "known" violations of prohibitions..." and in (ii) "known" failure to undertake or complete..." It should also be added after the word "any" in Part 391.23(c)(1)(i), (ii), (iii) and (iv).

"Daisy-chain" Requirement in Part 382.413(a)(2)

FHWA states that "the information obtained from a previous employer must contain any alcohol and drug information the previous employer obtained from other previous employers.

NPTC does not believe that FHWA should require carriers to be the providers of information on a driver that did not occur while the driver was performing duties for them. If something did not happen during the driver's employment, that employer has no control over the accuracy or validity of the information. If the driver disputes it, how it could it be objectively used in the driver selection and hiring process?

NPTC proposes that FHWA eliminate the proposed requirement for the daisy-chain of information or modify it and use the suggestion of the American Trucking Associations that each prior employer provide the names of all known earlier previous employers.

The prospective/new employer can then compare this information with that of the driver candidate and follow up with each of the previous employers on its own.

Driver Review and Comment on Information from Previous Employers

Some carriers may choose to provide more information than is required in the Hazmat Act but it should be at their own discretion. A driver candidate, however, should only be permitted to review and comment on the information required in the Hazmat Act. Drivers should be advised of this at the time they are advised they will have the opportunity to review and comment.

NPTC recommends that the proposal be amended to state that a driver candidate may only review and comment on that information prescribed in Part 391.23(c)(1).

OTHER RECOMMENDATIONS

Third Party Providers

There is no mention in the proposed rule as to the responsibilities of third party providers. The rule should outline what their role is with respect to inquiring and responding to information requests.

DOCKET MC-96-6-28  
PAGE 5 OF 6

Safety Performance History of New Drivers and the Future of FHWA Safety Management Strategies

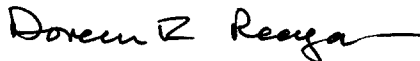
NPTC strongly urges the Office of Motor Carrier (OMC) Standards to consider how this proposed regulation on Safety Performance History of New Drivers and any proposed rulemaking fits into the overall vision and scheme for present and future safety management strategies and methodologies.

FHWA is moving towards a performance-based, data driven safety management and enforcement program as envisioned in Commercial Vehicle Information Systems and Networks (CVISN) and similar programs such as the Commercial Vehicle Information System (CVIS) and the Safety Status (SAFESTAT) model.

In this particular case, does the proposal request information available elsewhere and thus duplicate efforts? Is there a better, more credible source for driver information than employer files? These are the kinds of questions we should all be asking each time a rulemaking set forth by OMC Standards.

We appreciate the opportunity to provide comments to this docket.

Sincerely,



Doreen E. Reagan  
Director of Safety Programs

DOCKET MC-96-6-28  
PAGE 6 OF 6